

a situation where NMTV could not repay it. Their argument is untenable and should be rejected.

58. Glendale/SALAD also ignore the evidence that between December 1988 and May 1989, Mrs. Duff tried unsuccessfully to obtain cable carriage for the Odessa station. She again was very specific in her testimony, naming the person with whom she worked and reporting that "I was in communication with him all these months." (Tr. 1883.) Glendale/SALAD then falsely argue that Mrs. Duff and Pastor Espinoza decided to commence efforts to sell the Odessa station "without any discussion whatsoever." (Glendale PFCL I ¶94.) The record clearly establishes that the two of them actually had various discussions about the relevant subjects, including the amount of donations being received, the costs of building a studio and producing local programs, the need for the station to be self-sustaining, the insufficiency of the revenues to sustain local programming, and the need for NMTV therefore to grow into larger markets. (TBF PFCL ¶78.) By ignoring that evidence, Glendale/SALAD are the ones who are writing a fiction.

59. Without the real evidence on their side, Glendale/SALAD resort again to personal attack. They first accuse Mrs. Duff of contradicting an earlier affidavit when, in fact, her testimony is entirely consistent with that affidavit. Glendale/SALAD argue that her earlier affidavit attributed the decision to sell Odessa to a desire to acquire a station in a larger

market while, according to Glendale, she did not cite that factor in this case. (Glendale PFCL I ¶95.) In fact, in explaining the May 1989 decision to sell the Odessa station, Mrs. Duff's testimony in this case states:

"Second, over a period of time, the owner of a station in Concord, California, in the San Francisco area, would indicate that he might want to sell the station, and would then change his mind. In May 1989 I thought a chance to acquire either that station or another station in a larger market existed." (TBF Ex. 101, pp. 53-54; emphasis added.)

* * * * *

"At that point ... we had already become aware of another opportunity that presented itself to us. I'm not positive if it was in Concord, but there was at least some station that we were thinking about acquiring that was in a much larger market." (Tr. 1881; emphasis added.)

Thus, Glendale/SALAD's account of Mrs. Duff's testimony (Glendale PFCL I ¶95) is selective and misleading. It omits entirely the preceding testimony, which establishes that the contradiction alleged by Glendale/SALAD does not really exist. That testimony could hardly have escaped Glendale/SALAD's notice.

60. Glendale/SALAD also allege that Mrs. Duff contradicted her earlier affidavit when she explained that the inability to obtain cable carriage and a reduction of donations below expectations impeded plans for local programming and contributed to the decision to sell Odessa. (Glendale PFCL I ¶95.) Here is what the affidavit said:

"I have been involved with NMTV since its inception, and, while I have generally supported NMTV's role as

an outreach of Trinity's television ministry, I have an interest in local and public affairs oriented programming. This was particularly true with respect to the Midland-Odessa station, where I resisted the early sale of the station because I thought we could do some real good in broadcasting local and public affairs oriented programming in that television market. Our plans were largely frustrated, however, because of the lack of local cable carriage which dramatically reduced station revenues." (TBF Ex. 121, p. 15; emphasis added.)

Again, the contradiction alleged by Glendale/SALAD does not exist.

61. Glendale/SALAD next shift their attack to counsel and Pastor Espinoza. They argue that Pastor Espinoza's testimony that he decided NMTV should sell the Odessa station in May 1989 following a discussion concerning possible acquisition of a station in Concord, California, is an anachronism that counsel fed and Pastor Espinoza adopted. (Glendale PFCL I ¶98.) The alleged anachronism, according to Glendale/SALAD, arises because the NMTV Board did not authorize "the pursuit" of the Concord station until June 1990. (Id.)

62. Here again, Glendale/SALAD are playing fast and loose with the facts. Initially, it is inaccurate to assert that in June 1990 the Board authorized "the pursuit" of Concord. What the Board authorized then was not the pursuit, but "the purchase" of the Concord station. (MMB Ex. 315.) The pursuit, as the record makes clear, had begun much earlier. Thus, as discussed above (¶59), Mrs. Duff explained that the possible purchase of the Concord station was an on-again off-again

proposition that had continued "over a period of time." Moreover, Pastor Espinoza specifically recalled that "a long period of time" elapsed between his discussion about selling Odessa to pursue the purchase of Concord and the meeting at which the purchase was formally authorized. (Tr. 4377-78.) Thus, Pastor Espinoza's testimony that he recalled discussing the Concord purchase in relation to his decision to sell Odessa is not an anachronism and was not fed to him by counsel. It was his recollection, which is supported by other evidence. It is difficult to imagine proposed findings less faithful to the facts than Glendale/SALAD's.

63. Returning to the question of how and by whom NMTV's decisions were made, the key decisions regarding the Odessa station are indeed particularly revealing. The decision to build the station and not to sell the permit was made at a Board of Directors meeting in June 1987 by Mrs. Duff and Pastor Espinoza. The decision to try to continue operating the station and not to sell was made at a Board of Directors meeting in December 1988 by Mrs. Duff and Pastor Espinoza. The decision to initiate efforts to sell the station was made in May 1989, following discussions between Mrs. Duff and Pastor Espinoza, by all three Directors -- Mrs. Duff, Pastor Espinoza, and Dr. Crouch. All of this demonstrates that NMTV's individual minority Directors were recognized and respected, and that TBN and Dr. Crouch neither controlled nor attempted to control NMTV. The facts concerning NMTV's decisions to construct, operate, and

ultimately sell the Odessa are exactly as set forth in TBF PFCL ¶¶40-46, 71, 75, and 77-78, which therefore should be adopted.

(C) Glendale/SALAD's Three Key Decisions

64. After erroneously dismissing significant NMTV Board decisions that refute their position, Glendale/SALAD designate three matters as "key decisions" that "undeniably document" TBN's control of NMTV. (Glendale PFCL I ¶603.) As discussed below, the three cited matters document no such thing.

(i) Pastor Aguilar's Resignation

65. Having announced that they have evidence which "undeniably documents" TBN's alleged control of NMTV, Glendale/SALAD begin with pure speculation. During discovery, Glendale vigorously pursued a theory that Paul Crouch had forced Pastor Aguilar to resign from NMTV's Board. Every witness who was asked about that denied it. The record at the hearing produced the same result. (Tr. 3144-45, 3774; TBF Ex. 107, pp. 182-84.) After denying the accuracy of each element of Glendale's theory, Pastor Aguilar cogently summarized the facts in three words: "Not a chance." (TBF Ex. 107, p. 183.) Glendale chose not to ask Dr. Crouch directly about this issue, preferring to argue unfounded innuendoes rather than learn what actually happened. Nonetheless, Dr. Crouch's testimony on Pastor Aguilar's performance as a Director reflects commendable magnanimity that

refutes the theory that he forced Pastor Aguilar to resign.
(Tr. 2412.)

66. Earning an "A" for tenacity, but an "F" for accuracy, Glendale presses on and argues:

"The solution, suggested by Trinity Broadcasting Network's FCC counsel, was to dilute Phillip Aguilar's position by appointing a fourth director. This was done without any prior consultation with Phillip Aguilar. It was obviously a decision made by Paul Crouch over which the NMTV board had no control. Subsequently, problems continued to occur with Phillip Aguilar, ultimately resulting in his resignation shortly after a telephone conversation with Paul Crouch. The circumstances support a conclusion that if Phillip Aguilar wasn't asked to resign in so many words, it was at least made clear to him that his continued participation was no longer appreciated. Ultimately, it may be concluded from this incident that the directors of NMTV serve at the pleasure of Paul Crouch. If they cease to enjoy that pleasure, they are subject to being neutralized or ousted from their positions. (Glendale PFCL I ¶604; emphasis added.)

That is hardly an argument based on "undeniable documentation." A party reduced to averring that something "was obviously a decision" from which something else "may be concluded" plainly lacks undeniable documentation of either the decision or the conclusion. Here, all Glendale/SALAD have is false speculation and wishful thinking.

67. The assertions on which Glendale/SALAD base their argument are completely wrong. They first contend that Pastor Hill was appointed to NMTV's Board to dilute Pastor Aguilar's position without any prior consultation with Pastor Aguilar. (Glendale PFCL I ¶604.) Here is Pastor Aguilar's testimony:

"Q Now, you recall there came a time when Dr. Hill was invited to join the board of directors?

A Yes, sir.

Q Did you think that was a good idea?

A Yes.

Q Whose idea was it, first of all, to propose the idea that Dr. Hill be a member of the board of directors?

A I'm not sure who thought up the idea first or how it came about.

Q Who presented the idea to you?

A I'm not sure if it was Jane or Paul.

Q Did you know Dr. Hill?

A Yes.

Q You knew him as of the time he came on the board?

A Yes.

Q And how did you come to know him?

A Through ministry, through different years of watching him preach, interacting with him in the community, seeing him out on the streets, South Central, Watts, all the different places. He was a man all over from the White House to the city streets.

Q So you were in favor of him becoming a director?

A Oh, for sure." (TBF Ex. 107, pp. 168-69.)

Considering that Pastor Hill is a distinguished leader in the minority community and an asset to any organization with which he associates, it is unsurprising that Pastor Aguilar thought it a good idea and "for sure" favored adding Pastor Hill to the Board. Pastor Hill similarly testified that he already knew and respected Pastor Aguilar. (TBF Ex. 102, p. 14; TBF PFCL ¶154.)

Glendale/SALAD's suggestion that Dr. Crouch foisted Pastor Hill on Pastor Aguilar is pure fantasy.

68. The linchpin of Glendale/SALAD's position is their false insinuation that the decision to add Pastor Hill to NMTV's Board, and the meeting to implement that decision, all were arranged overnight in response to Joseph Dunne's letter dated October 1, 1991. (Glendale PFCL I ¶¶149-58.) Thus, they stress that Mr. Dunne's recommendations were implemented "only one day after the letter was written and faxed" (Id. ¶158; emphasis in original), implying that the addition of Pastor Hill to NMTV's Board was hastily arranged the next day. To make that argument, Glendale/SALAD necessarily ignore the evidence, which shows that the process of adding Pastor Hill to NMTV's Board was well in progress before Mr. Dunne wrote his letter.

69. Initially, it will be noted that Glendale/SALAD developed no record as to how the meeting on October 2, 1991, was arranged or why it was held on that day. Instead of adducing the facts, Glendale/SALAD chose to proceed by innuendo. The record does indicate, however, that October 2, 1991, was immediately after the deadline the Bankruptcy Court had given NMTV to obtain Commission approval of its application to acquire the Wilmington/Philadelphia station, and that matter and the possibility of continuing to try to acquire the assets of that station were considered. (MMB Ex. 377.) Although Pastor Hill was elected to the Board at that meeting, the record clearly

shows that his election was the end of a process which began earlier and not in response to Mr. Dunne's letter. Thus, Pastor Hill explained that he had been asked to join NMTV's Board weeks earlier, in August or early September, but that before joining he wanted additional information. (TBF Ex. 102, pp. 13-16; Tr. 1926-27; 2019-20; 2026; TBF PFCL ¶153-55.) Specifically, he waited to receive and review a package from Mrs. Duff that contained a variety of information about the corporation, and he sought legal assurance that at some point NMTV could separate from its joint venture with TBN. (Id.) Only after those steps had been completed and Pastor Hill had been satisfied did he agree to join the Board. Therefore, Glendale/SALAD's ambitious theory that Dr. Crouch frenetically arranged to add Pastor Hill to NMTV's Board within 24 hours of receiving Mr. Dunne's letter is false.

70. Glendale/SALAD also present a jaded description of the conversation between Mrs. Duff and Armando Ramirez regarding Pastor Aguilar's resignation. Taking Dr. Ramirez' testimony out of context, Glendale/SALAD argue that when Dr. Ramirez asked Mrs. Duff about the circumstances of Pastor Aguilar's resignation, she was "very evasive" (Glendale PFCL I ¶162), insinuating that Mrs. Duff wanted to conceal that Pastor Aguilar had been asked to resign. However, Glendale/SALAD omit the remainder of Dr. Ramirez' testimony, in which he explained that when he asked Mrs. Duff about Pastor Aguilar, "she just said let's pray for

him. You know, like everybody goes through their troubles and tribulations." (Tr. 4028.) He then continued:

"A Yes. You know I, I wanted to know I mean whether there were substantial things or not. Just curious basically.

Q And she wouldn't be responsive?

A Right. Yeah. She would not -- she just said let's pray for him. Yeah, you know, people say this and the other. And allegations are thrown at just about anybody, the president, pastors, evangelists, whoever." (Tr. 4029.)

Thus, what plainly happened was that Mrs. Duff expressed compassion for Pastor Aguilar and was reluctant to embarrass him by discussing his problems with a curious third party. There is absolutely no evidence that she was hiding a request for Pastor Aguilar's resignation that had never been made. It is a sad, if telling, commentary that Glendale/SALAD choose not to see an act of human decency when it stares them in the face, and try to twist it into something sinister. Even Glendale/SALAD's stilted version of events does not prove that anyone requested Pastor Aguilar's resignation.

71. While Glendale/SALAD's submission contains various other errors, suffice it to say that their contentions regarding Pastor Aguilar's resignation from NMTV's Board were unproved speculation during discovery and remain unproved speculation after hearing. The testimony and the documented evidence establish that events simply did not happen as Glendale/SALAD argue they did. The Presiding Judge should reject these allegations.

(ii) Community Brace

72. During the hearing and in its PFCL, Glendale attached inordinate significance to NMTV's possible investment in Community Brace. (Glendale PFCL I ¶¶209-221, 605). Considering the same evidence, the Mass Media Bureau has concluded that the Community Brace matter merits at most two sentences. (MMB PFCL ¶118 and n. 22.) The Bureau has weighed that matter correctly.

73. Glendale/SALAD again badly mischaracterize the evidence. First, they ignore that from outset NMTV's participation in Community Brace was part of a joint venture in which TBN also would participate. While they glibly argue that "the money, of course, would actually come from Trinity Broadcasting Network" (Glendale PFCL I ¶605), the facts show that TBN was to provide \$1.0 million and NMTV was to provide the other \$500,000 from its own funds. (TBF Ex. 101, p. 56; TBF Ex. 102, p. 22; TBF Ex. 104, p. 18; Tr. 2318.) And since TBN was to participate directly in the transaction, TBN naturally was involved in the arrangements. Nor is it unusual, as Glendale/SALAD suggest (Glendale PFCL I ¶¶211, 605), that preliminary documents were exchanged for review before the TBN and NMTV Board meetings which formally authorized the transactions. Such exchanges are commonly made to enable the parties to make informed decisions whether to proceed. Indeed, the NMTV and TBN Boards needed to know the requirements of the bank's security agreement to consider how to proceed. In arguing that NMTV's participation

"obviously" was "decided independent of the NMTV board" (Id. ¶605), Glendale/SALAD ignore the testimony that Dr. Crouch affirmatively contacted Pastor Aguilar while he was traveling in the San Francisco Bay area, that they had a "long" discussion about Community Brace and matching funds, and that Pastor Aguilar thought it was "an excellent possibility" and approved the idea. (TBF Ex. 107, pp. 176-77.) NMTV's participation in Community Brace was decided by Jane Duff, Pastor Aguilar, and Dr. Crouch -- the three NMTV Directors having no interest in Community Brace -- who then joined in a formal corporate action that authorized the President (Dr. Crouch) and the Secretary (Mrs. Duff) to proceed in such manner "as they deemed reasonable." (MMB Ex. 405.)

74. The ensuing events regarding Community Brace are straightforward. NMTV made a good faith effort to participate in the project, going so far as to obtain a line of credit for Community Brace's benefit. (TBF Ex. 101, Tab GG, p. 2.) The NMTV Directors who had been authorized to effectuate the matter, Mrs. Duff and Dr. Crouch, then received competent expert advice that the structure of the project was illegal. (TBF PFCL ¶197.) Because it was illegal, they did not pursue it. In attempting to exaggerate those developments into some large impropriety, Glendale made concerted efforts to distort the record. Specifically, although Norman Juggert's letter to Community Brace explaining why the project was illegal included pages of statutes supporting that conclusion, Glendale excised the

statutes and submitted only part of the actual document for the record. (Tr. 3756.) Glendale also excluded from its submission to the Commission Community Brace's response to Mr. Juggert's letter, in which it reported that it had checked Mr. Juggert's advice with (a) state officials, (b) federal officials, (c) local officials, (d) church officials, (e) certified public accountants, and (f) legal counsel, who all agreed that Mr. Juggert's advice was correct. (TBF Ex. 117.)

75. In short, contrary to Glendale/SALAD's argument, the decision to pursue participation in Community Brace was in fact made by all three NMTV Directors who were not involved in Community Brace. However, the NMTV officers who were authorized to effectuate the transaction "as they deemed reasonable" then learned that participation in Community Brace was illegal, and extensive Board consideration was not required to realize that NMTV should not participate in something illegal. The Mass Media Bureau has correctly given this matter all the attention (two sentences) it deserves.

(iii) The Debt Owed by Prime Time

76. The third matter which Glendale/SALAD claim "undeniably documents" that TBN controls NMTV is NMTV's decision to forgive the debt that Prime Time Christian Television ("Prime Time") owed from purchasing the Odessa station. (Glendale PFCL I ¶¶102-03, 606; SALAD PFCL ¶82.) However, nothing in the record documents that TBN controlled this decision. Rather,

Glendale/SALAD merely infer that since NMTV's decision not to force Prime Time off the air enabled TBN to maintain an affiliate in Odessa, TBN was the "only apparent beneficiary" and NMTV's decision was "irrational" unless the motive was to benefit TBN. (Id.) This contention presumes that all decisions in life are driven by money. While that appears true of Glendale, it is not Commission policy, and it certainly is not true of Jane Duff, E.V. Hill, and Armando Ramirez, the people who made this decision.

77. Initially, there can be no doubt that if TBN had reduced NMTV's indebtedness to TBN as part of the process by which NMTV forgave Prime Time's debt, Glendale/SALAD would accuse TBN of using its position as NMTV's creditor to influence NMTV's conduct. However, nothing like that happened. NMTV Board members had "several" discussions over the course of a year regarding Prime Time's inability to pay its debt and the consequences of enforcement efforts by NMTV. Dr. Ramirez joined the Board and considered the issue at "the end of a process." (TBF Ex. 102, p. 25; Tr. 1981, 2005, 4072, 4121.) The fact that a year-long process ensued before a decision was made belies the contention that TBN and Dr. Crouch controlled NMTV. If they did, there would have been no discussions and no process, but a mandate from them at the outset.

78. Each of the individuals who made this decision explained his or her reasons. Mrs. Duff stated that she wanted

the TBN programming to continue and that, as a minority who had started the Odessa station, she did not want to pursue enforcement activities that would cause NMTV's first station to look like a failure. (Tr. 2230-32; TBF PFCL p. 119, n. 33.) She is entitled to hold those views, and nothing in the record indicates that TBN or Dr. Crouch made her decision for her. Pastor Hill stated that he made a spiritual judgment that NMTV should not try to enforce the debt and force the station into failure, and he felt that helping Christian programming survive and expand was a greater value. (Tr. 1981, 2005, 2040; TBF Ex. 102, p. 25; TBF PFCL ¶166.) He is entitled to hold those views, and nothing in the record indicates that TBN or Dr. Crouch made his decision for him. Dr. Ramirez stated that he thought the decision to forgive was "a charitable act" given NMTV's "shared values" with Prime Time. (Tr. 4071-72, 4119-20; TBF PFCL p. 119, n. 33.) He is entitled to hold those views, and nothing in the record indicates that TBN or Dr. Crouch made his decision for him.

79. At its root, Glendale/SALAD's argument misperceives that the fiduciary responsibility of Directors of nonprofit entities is to make as much money as possible, and that anything else is irrational. In truth, the fiduciary responsibility of such Directors is to effectuate the nonprofit purpose of the entity. NMTV's decision to enable Prime Time to continue broadcasting religious programming did that. It would be unconstitutional, and bad policy, for the Commission to question

such spiritual and charitable decisions. (TBF PFCL ¶¶673-80.) It also must be noted that Glendale/SALAD's argument reflects extreme hypocrisy. SALAD would doubtless applaud a creditor who forgave a debt owed by an Hispanic licensee serving SALAD's ends. Glendale would likewise doubtless see a laudable motive if it were the beneficiary. The standards should not be different where religious organizations are involved.

80. In short, none of Glendale/SALAD's three "key decisions" supports their position. Returning again to the question of who made the decisions, the record shows that Jane Duff, Pastor Aguilar, and Paul Crouch added Pastor Hill to NMTV's Board, and neither TBN nor Dr. Crouch requested Pastor Aguilar's resignation. The record shows that Mrs. Duff, Pastor Aguilar, and Dr. Crouch decided that NMTV should pursue participating in Community Brace, and the officers to whom they delegated the matter properly ended those efforts when advised that participation by NMTV was illegal. The record shows that Mrs. Duff, Pastor Hill, and Dr. Ramirez decided to forgive the Prime Time debt at an NMTV Board meeting after discussions among NMTV Directors over a year. All of those decisions, plus the decisions to sell the Houston station and to build and operate the Odessa station, prove that NMTV has had a functioning Board whose minority members have participated in significant actions of the company. To be sure, the Board has not functioned perfectly, and self-interested critics can criticize. However, the decisions cited here establish NMTV's good faith intention

to have participating minority Directors and refute the charge that TBN or Dr. Crouch were in control.

(2) Role of Jane Duff

(A) The Law and Jane Duff's Record

81. Since Jane Duff is deeply involved running NMTV's affairs and is a minority, Glendale/SALAD must do all they can to debunk her role as a member of NMTV's Board. However, the lone short paragraph they devote to their conclusion on this point betrays their inattention to Commission law and policy. (Glendale PFCL I ¶589.) Lacking evidence that Paul Crouch ever directed her to make any decision for NMTV, and faced with clear evidence that she opposed him on key NMTV decisions (¶¶41-42, 46, 51-60, 63 above; TBF PFCL ¶¶643, 646-47), Glendale/SALAD assert that Mrs. Duff does not qualify as an NMTV Director in her own right because (a) she holds a high-level management position at TBN; (b) her role at TBN would entail an apparent conflict if NMTV were truly separate; and (c) she relied on Dr. Crouch and Mr. Miller regarding engineering matters. (Glendale PFCL I ¶589.)

82. Commission law and policy hold otherwise. In Southwest Texas Public Broadcasting Council, 85 FCC 2d 713, 714 (1981); The Seven Hills Television Company, Inc., 2 FCC Rcd 6867, 6879-80 (Rev. Bd. 1987); Spanish International Television Co., Inc., 5 RR 2d 3, 6 (1965); and Reexamination of the

Commission's Cross-Interest Policy (Notice of Inquiry), 2 FCC Rcd 3699 (1987), the Commission affirmed that a person holding a key employment position for one licensee is not precluded from substantial involvement with another licensee. (TBF PFCL ¶¶640, 646.) Glendale/SALAD ignore that authority. They also ignore the fundamental premise of the minority ownership policy at issue. The policy contemplates that the TBN/NMTV relationship will be a joint venture from which NMTV will derive substantial management and technical assistance. (¶¶12-13, 20 above; TBF PFCL ¶¶590-600.) Thus, contrary to Glendale/SALAD's contention, the Commission expects an integrated relationship and not a complete separation between the joint venture parties. Contrary to Glendale/SALAD's contention, Commission policy does not require TBN to do more than it did to assist NMTV with translator acquisitions in order to qualify for the incentives created by the policy. (¶17 above.) Contrary to Glendale/SALAD's contention, the Commission expects minorities like Jane Duff, in operating their fledgling minority companies, to apply the knowledge and experience they have gained from their work with established broadcasters. And, contrary to Glendale/SALAD's contention, technical assistance of the kind available to NMTV from Paul Crouch and Ben Miller is a specific goal of the minority ownership policy.^{10/}

^{10/} Indeed, Glendale/SALAD cannot cite a single instance when the assistance provided by Dr. Crouch or Mr. Miller has disadvantaged NMTV. The goal of such assistance plainly is for NMTV to have the best technical service possible at the most favor-
(continued...)

83. Lacking any real evidence to discredit Jane Duff as a minority member of NMTV's Board in her own right and the person responsible for NMTV's day-to-day affairs, Glendale/SALAD make snide charges meant to suggest that she is not "minority enough" to count as a true minority Director. There is no justification for demeaning Mrs. Duff in that way.

84. Glendale/SALAD first assert that under Mrs. Duff's supervision NMTV has not done enough for minorities. Thus, they argue:

"Perhaps more significantly, there is nothing in NMTV's actual conduct that reflected an interest in minorities beyond that necessary to colorably qualify for the minority preference or to otherwise comply with Commission policies affecting minorities." (Glendale PFCL I ¶619; emphasis added.)

* * * * *

"There is nothing in this record (beyond self-serving assertions) that reflects any special NMTV purpose of assisting minorities." (Id.)

(See also SALAD PFCL ¶119 and ¶¶20, 22-23 above.) In arguing that "there is nothing in [the] record," Glendale/SALAD conveniently fail to note that Glendale successfully urged the exclusion of such evidence, as the following objections make clear:

"MR. COHEN: -- I want to bring to your attention. Throughout this exhibit, and I will -- I'm prepared to mention each point specifically, there is a -- there

10/ (...continued)

able cost. It is absurd to suggest that Mrs. Duff does not function independently as a member of NMTV's Board because she relies on the assistance of experts in such matters, including the Commission-approved President of the company.

is much text about employing, training and promoting minorities and I submit to you that that matter is absolutely collateral to the designated issues. That has nothing to do with the designated issues. That is a matter which may be indeed relevant in a license renewal proceeding for NMTV, but it doesn't have -- it's not relevant to determining issue A and B." (Tr. 475-76; emphasis added.)

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"MR. COHEN: I'm objecting, Your Honor, to the sentence, 'NMTV's minority-controlled board has made a strong commitment to employing, training and promoting minorities, to initiating outreach to the minority community and to producing local minority programming all of which are now being realized at our Portland station.' It's not, it's not theoretical, it's very specific." (Tr. 487; emphasis added.)

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"MR. COHEN: This now deals with something more than what the preceding paragraphs that you -- deal with. This, this goes into the question of employing and training minorities and outreach activities to the minority community, as plans for minority advisory boards and student intern programs and school minority enrollment. Not only have some of these plans not occurred yet, but they're speculative. But it's clearly not relevant to the control issue." (Tr. 620; emphasis added.)

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"MR. SCHAUBLE: Your Honor, this relates to the material that was rejected concerning the question of the number and the amount of minorities that were employed, Tab AA, at NMTV's Odessa station ... which Your Honor has ruled has no, no relevance to this proceeding" (Tr. 679; emphasis added.)

SALAD joined these objections. (Tr. 480-82, 489-90.)

85. Glendale/SALAD thus develop the perfect Catch-22. First, they keep out the evidence of NMTV's "actual conduct" in assisting minorities. Then they argue that NMTV has not shown

it has done enough for minorities. That is an unworthy exercise in gamesmanship.

86. Nonetheless, there is ample evidence that Jane Duff has instilled NMTV with a proud purpose to help minorities. The evidence includes the minutes of NMTV's June 1987 meeting when she rejected Dr. Crouch's proposal to sell the Odessa construction permit because of the importance "to establish minority controlled television as a success." (TBF Ex. 101, Tab B, p. 1; MMB Ex. 147, p. 1; TBF PFCL ¶41.) Despite what Glendale/SALAD may think, her concern that NMTV create a role model as a successful minority business, and "not another minority organization that had failed" (Tr. 1733; TBF PFCL ¶41), carries enormous significance to members of the minority community. Pastor Hill expressed similar anguish about the adverse impact when the minority community sees the failure of minority owned businesses "strung out as wasted material and wasted money." (Tr. 2012-13; TBF PFCL ¶155; see also Tr. 2015-16; TBF PFCL ¶154.)

87. This special perspective, which non-minorities would not have, is one of the rich values that comes from the diversity created by the minority ownership policies. Mrs. Duff has brought that value to NMTV through: (a) her refusal to sell the Odessa permit when Dr. Crouch wanted to do so and her insistence that NMTV proceed to build (TBF PFCL ¶41); (b) her refusal to sell that station when she still thought it could generate

sufficient revenues to support studio construction and local production (Id. ¶46, 75, 77); (c) her concern that the station purchaser achieve those goals so NMTV's first station would not be branded a failure (Id. ¶77; Tr. 1884); and (d) her vote to forgive the Prime Time debt so that the station "started by this minority group" would not fail (TBF PFCL p. 119, n. 33). Those are the words and decisions of Jane Duff, not TBN or Paul Crouch.

88. Mrs. Duff's concern to help minorities is also seen in her recommendation that the NMTV Board hire James McClellan as Station Manager. (TBF PFCL ¶79.) Apparently infected with their own "patronizing racial stereotypes" that minority companies must hire only minorities and only minorities can serve minority needs (Glendale PFCL I ¶¶311-12, 577; SALAD PFCL p. 17, n. 8), Glendale/SALAD ignore the uncontradicted evidence that Mrs. Duff knew that Mr. McClellan had a special rapport with members of the minority community, had a track record of frequently broadcasting minority-oriented programs, and was experienced in the local production of such programs. (TBF PFCL ¶79.) Mrs. Duff thus recommended that NMTV hire a known quantity who had excellent qualifications to provide service and assistance to minorities.

89. Mrs. Duff's concern to help minorities is further evidenced in the training she personally gave to Mr. McClellan after he was hired. (TBF PFCL ¶80.) Completely ignored by

Glendale/SALAD, the evidence shows that she instructed him to "hire people from the minority community, develop and train them, give them opportunities to advance," and "provide minorities with an opportunity to become involved in station management." (Tr. 4473-74; TBF Ex. 109, p. 9; TBF PFCL ¶80.) "[T]hen another part of it would be to do minority programming for the minorities with using minority people in dealing with minority issues," and "to produce and broadcast programming that responds to the needs of the minority community using minorities in the programming." (Id.) She also instructed him to preach the gospel, which plays an "important role....in the minority communities as a vehicle to promote inter-racial harmony and to minister to the needs of people in those communities," including "family values, racial harmony, guidance for the drug and alcohol addicted, hope for people in despair, and feeding the homeless and poor." (Id.; TBF PFCL ¶177.) That leadership came from Jane Duff, not TBN or Paul Crouch.

90. While Glendale/SALAD criticize Mrs. Duff's prudent decision not to undertake studio construction and production in Odessa that NMTV could not afford, they ignore what she did do in Portland when revenues could support it. Thus, they completely ignore her instructions to Mr. McClellan "that we would complete NMTV's local studio and then use it to produce local programs to serve the minority community." (TBF Ex. 109, p. 9; TBF PFCL ¶80.) They completely ignore that NMTV followed that instruction, spending over \$1.1 million plus additional costs

for cameras and production equipment to establish the local studio. (TBF PFCL ¶¶183-84.) And they completely ignore that Mr. McClellan then followed Mrs. Duff's instructions: implementing specific public affairs programming that features minority hosts and emphasizes minority issues; establishing outreach activities toward the minority community; and hiring, training, and promoting minority employees. (¶23 above.) The impetus for those accomplishments came from Jane Duff and the NMTV Board, not from TBN or Paul Crouch. (Id.)

91. Thus, contrary to Glendale/SALAD's argument, the actual conduct of Mrs. Duff and NMTV reflects a great interest in serving and assisting minorities. Moreover, that evidence was elicited primarily by Glendale/SALAD in their adverse examination of NMTV's witnesses; it could not be suppressed even though Glendale/SALAD successfully opposed most of NMTV's direct case on the subject. Also noteworthy is that most of these events -- the decisions to construct and operate Odessa, the recommendation and hiring of Mr. McClellan, the training and instructions about NMTV's minority purposes and goals, and the commencement of the extensive undertaking to construct the local studio -- occurred before the Wilmington petition to deny was filed.

92. Glendale/SALAD also disregard the evidence that Mrs. Duff's responsibilities and actions for NMTV extend beyond her functions as a TBN employee and establish a much greater role

running NMTV. While TBF's PFCL acknowledge that many of Mrs. Duff's functions for NMTV have been performed in conjunction with her activities as a key employee at TBN (TBF PFCL ¶62), which is permissible under Commission precedents allowing licensees to have such common personnel (¶82 above), those related activities are only part of the record. The record also contains significant evidence that Mrs. Duff carries responsibilities and has taken actions for NMTV that are not part of her TBN duties and refute the contention that she does not function as a member of NMTV's Board in her own right. (TBF PFCL ¶¶63, 647-48.) Glendale/SALAD disregard that evidence and propose an Initial Decision that assesses only half the record. The other half should be assessed as well.

93. Thus, if Jane Duff were a "subaltern" for TBN, she would not have sought a competing bid when TBN proposed to charge NMTV for business services. (TBF PFCL ¶204; Tr. 1426-27; ¶24 above.) If she were a "subaltern" for TBN, she would not have sought to cut TBN's charges by half to save NMTV money. (TBF PFCL ¶204; TBF Ex. 101, p. 40; Tr. 1426.) If NMTV were the same as TBN, she would not have been in Portland to hire the entire staff of that station, since she does no such hiring for TBN. (TBF PFCL ¶¶63, 189.) If NMTV were the same as TBN, she would not have interviewed and hired Messrs. Prentice and Fountain, since she neither interviews nor hires any Chief Engineers for TBN. (Id. ¶¶63, 189, 193.) If NMTV were the same as TBN, she would not have hired the Station Managers for NMTV's